

IN SENATE OF THE UNITED STATES.

DECEMBER 27, 1839.

Ordered to be reprinted.

JANUARY 10, 1838.

Mr. TIPTON submitted the following

REPORT :

[To accompany bill S. 18.]

The Committee on Roads and Canals, to whom were referred the petition and papers in the case of Loomis and Gay, report :

That it appears, by the evidence before the committee, that Walter Loomis and Abel Gay were sub-contractors under Loomis, Skinner, & Loomis, and entered in a contract, in the year 1817, for building three miles of the western division of the Cumberland road, while the work was under the superintendence of Josias Thompson as United States commissioner ; that said Walter Loomis and Able Gay contracted with the United States to build side-walls, and to prepare coping stone for parapet walls, at a place called Buffalo hill, near Mills's barn ; that, during the progress of the work, the superintendent determined to alter the plan of making the road, and directed the petitioners to conform to his new plan, thereby greatly increasing the expense of the work to the contractors, for all which he assured them the United States would compensate them. The contractors constructed the road agreeably to the directions of the superintendent, but before the road was completed, the superintendent was, for some cause unknown to petitioners, removed from office, and commissioners appointed to inspect the work done under Thompson's superintendence before money could be paid to the contractors ; and the money due to the claimants for work actually done was unjustly detained, to their great injury. The act of Congress, of 2d July, 1836, for the relief of the petitioners, Walter Loomis and Abel Gay, contains a provision that the balance paid them should not exceed \$41 71, a small balance due them under a measurement of their work done before Thompson went out of office ; but made no provision to pay them for extra work done by them as sub-contractors, nor for the amount due them for parapet walls, coping stone, and other work done, wherein they were original contractors.

The committee perceive that, on the 5th May, 1824, an act passed for the relief of Ichabod Lord Skinner, another contractor on the road, whose claims seem to have been precisely similar to that of Loomis and Gay, authorizing the Secretary of the Treasury to settle his accounts on the principles of equity, and to pay him the balance found due. The committee consider the case of these petitioners equally as meritorious, and report a bill.

The petition of Walter Loomis and Abel Gay, of the State of Connecticut, humbly represents unto the honorable the Senate and House of Representatives of the United States, in Congress assembled :

That the said Walter Loomis and Abel Gay heretofore presented their petition to your honorable bodies, praying that compensation be made them for extra work and labor done and performed by them on the western division of the Cumberland road, which petition, with accompanying exhibits and depositions, is on file in the clerk's office of the Senate, and which your petitioners pray may be made part of this petition ; and these petitioners further humbly represent, that, at the sessions of Congress held in the years 1835 and 1836, a bill passed both branches of your honorable body giving these petitioners limited relief ; and these petitioners humbly suggest that the bill passed for their relief aforesaid was a bill predicated on the statement of the account as kept by Josias Thompson, between the United States and these petitioners ; and as it will appear by said account and accompanying testimony that said account included only the work which was done by these petitioners on their contract and original undertaking with said superintendent, Josias Thompson, and did not include any part or portion of the extra work claimed by these petitioners in their claim heretofore urged upon the consideration of your honorable bodies, the petitioners beg leave again to refer your honorable bodies to the petition, testimony, and documents, heretofore filed by them, and to the further documents and testimony herewith filed, for a fair and just understanding of their claims ; but they more especially call the attention of your honorable bodies to the report of the First Auditor to the Secretary of the Treasury, in the case of these petitioners, herewith filed, from which it will most fully appear that these petitioners have done work for the United States, and suffered losses to a large amount, for which they have never received any compensation, and that this claim arises on work and labor done by these petitioners as original parties, and not as sub-contractors. In consideration whereof, these petitioners humbly, though earnestly, ask your honorable bodies to re-examine their claim, and to extend to them that justice which is due from the Government to the humblest of its citizens ; which is due from the Government to those who have done her work and labor, and have received no compensation therefor ; and your petitioners will ever humbly pray, as in duty bound, &c.

WALTER LOOMIS,
ABEL GAY.

ARTICLES OF AGREEMENT

Made and fully concluded on this 25th day of August, 1817, between Walter Loomis and Abel Gay of the one part, and Josias Thompson, duly authorized on behalf of the United States, of the other part.

Whereas the aforesaid Walter Loomis and Abel Gay, agreed for and in consideration of the payments hereinafter mentioned, to build and complete, in a workmanlike manner, all the side and parapet walls not contracted for by others, from the Stone-coal fork, of Buffalo, to Claysville, in the following

manner: The side walls to be raised to the level of the road, the outside eighteen inches to be bedded in mortar; all the other part of the walls to be laid dry except the parapets, which must be made of stone carefully selected and bedded in mortar. The aforesaid Loomis and Gay are to provide all the materials of every kind necessary, and of the best quality, at their own expense, thus contracted for, and to build and complete the same in the following manner, and on the following conditions, viz: They are to dig the foundations, clear away, both above and below, such building, sufficient for the free entrance and passage of the water, to build all the walls of such a size and of such dimensions as may be directed, to cope and point such walls as may require it, to procure materials of an approved quality, and, in short, to do every thing necessary for the proper and permanent construction of the said walls, in such manner and form as the said superintendent may direct or approve; a good and sufficient number of good and experienced workmen shall be provided, and the work to progress with sufficient speed, so that contractors for turnpiking said road may not be delayed. In admeasurements, all mason work agreeably to their solid contents, and all openings to be deducted. The workmen shall move from any one part of said sections to any other, for the purpose of building such buildings as may be most needy. No mason work to be paid for, except such as shall be approved by the superintendent aforesaid. Should any of the contractors be thrown idle, or any of the men, so that they sustain loss, the sum or damages so sustained, in the opinion of the superintendent, shall be paid to the contractor for turnpiking. If he refuses such payment, the superintendent of said road, in such case, is hereby authorized to pay to the said contractor for turnpiking, out of any moneys due or coming due to the said Loomis and Gay.

The United States, it is understood, is at full liberty to change their locations, and the size of any walls pointed out in the grading notes, as the superintendent shall direct. Now, this agreement, made and concluded on the day and date herein written, between the said Loomis and Gay of the one part, and Josias Thompson, duly authorized on part of the United States, of the other part, witnesseth, that the said Loomis and Gay, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said Josias Thompson, duly authorized on the part of the United States, that they, the said Loomis and Gay, shall and will well and faithfully, and in a workman-like manner, on or before the first day of November, 1817, make, finish, and complete, in the manner and on the conditions herein before mentioned, all the walls on the aforesaid part of the United States western road, and which may be thought necessary, and may be directed to be built, by the superintendent aforesaid. In consideration whereof, the said Josias Thompson, duly authorized on behalf of the United States, doth hereby covenant and agree to and with the said Loomis and Gay, their heirs, executors, and administrators, that the said United States shall and will, for doing and faithfully performing the work aforesaid, well and truly pay, or cause to be paid to the said Loomis and Gay, their heirs, executors, or administrators, at the rate of two dollars and seventy-five cents for every perch of mason work contained in the above side and parapet walls. Except, at all times, reserving such sum as the superintendent aforesaid may conceive proper and necessary, to the United States, for the due performance of this contract, which sum, so reserved, shall be paid to the said Loomis and Gay, their executors, or administrators,

as soon as the aforesaid work is completed and approved as before provided. And the said Loomis and Gay, for themselves, their heirs, executors, and administrators, do further covenant, promise, and agree to and with the said Josias Thompson, duly authorized on behalf of the United States as aforesaid, that in case the said Loomis and Gay shall not well and truly, from time to time, comply with and perform all and singular the covenants, agreements, and conditions herein before stipulated on their part to be complied with, in the manner and form, and within the time herein before mentioned, or in case it should appear to the said superintendent of the road aforesaid for the United States, that the work does not progress with sufficient speed, so as to justify an opinion by the said superintendent that the said mason work herein provided to be done within the time herein before mentioned, or that the work is not so perfect as it ought to be, or that the contractors for turnpiking are delayed for want of mason work being done, that then the foregoing agreement, and every part thereof, on the part of the United States, shall become null and void. And the United States shall be at liberty, and have full right to employ and set to work, or to contract with any person or persons whomsoever, in the place of the said Loomis and Gay, and without any interruption whatsoever from the said Loomis and Gay, their heirs, executors, and administrators.

In witness whereof, the said Josias Thompson, duly authorized on the part of the United States, hath hereunto subscribed his name and affixed his seal, and the said Loomis and Gay have also hereunto set their hands and seals, the day and year first above written.

It is hereby provided, that no member of Congress shall be admitted to any part of this contract or agreement, or to any benefit arising therefrom.

JOSIAS THOMPSON,	[L. s.]
ABEL GAY,	[L. s.]
WALTER LOOMIS.	[L. s.]

To the honorable Levi Woodbury, Secretary of the Treasury of the United States.

Know ye that I, Abial B. Sherman, of the town of Norwich, county of New London, and State of Connecticut, of lawful age, do testify and say, that I was in the employment of Messrs. Walter Loomis and Abel Gay, contractors for building three miles of the western division of the Cumberland road, of Messrs. Loomis, Skinner, & Loomis, the firm Messrs. Baird, Campbell, & McGiffin, from the United States, and also said Walter Loomis and Abel Gay, contractors with the United States for building side walls and coping stone for parapet walls, near Mills's barn; that I was with them as clerk and assistant superintendent from the month of August, 1817, to December, 1819; and that on or about Sept., 1817, after President Monroe's tour through that part of the country, they commenced setting up the stone edgewise instead of laying them down as formerly, in a horizontal position, and was so continued to be done until the road was completed; and it was always my understanding that they were to be paid, *in addition to their contract with Loomis, Skinner, & Loomis*, by the United States, by express direction from Ex President Monroe, and by verbal contract with Josias Thompson, agent of the United States, and

that said extra work was always estimated at two dollars and fifty cents per rod, which is a reasonable difference, in my judgment, and is verily, in my belief, justly due said Loomis and Gay from the United States; and furthermore, that I was knowing to the contract between the said Loomis and Gay, and the agent of the United States, for building side walls supporting the filling at the foot of the hill near Mills's barn, (called Buffalo hill,) and that large heavy coping was put on the parapet of the walls of hewn stone, and doweled together with locust pins, for which they were to receive two dollars per foot, for $178\frac{3}{4}$ feet, besides the contract of the side walls; and at the late time, (about September or October, 1819,) it was finished, being about the time Josias Thompson, then agent, was superseded in office by David Shriver, his successor, *allows me to be confident*, that it has not been paid for on the part of the United States; that after which time, for one or two years, the work lay under the examination of commissioners; that one of said commissioners, and also original contractor, viz: Thomas McGiffin, Esq., was, in the belief of this deponent, to the great delay, injury, and prejudice of these contractors, in delaying an acceptance of the work, and thereby withholding payments due them; while, at the same time, receiving large salaries from the United States therefor; *and that these contractors especially*, Messrs. Walter Loomis and Abel Gay, sustain great damages and injuries by this delay, and the non-performance of the duties of the agent, on the part of the United States, to accept of the work in due time, and agreeably to contract, when finished; and that the said Loomis and Gay were, during this delay, subject to one lawsuit after another by those contractors under them, until the time and expense have more than wasted the value of three years' hard earnings of those industrious men. I do further state, that the graduation of the road at the place called Buffalo hill, (near Mills's barn,) was the most expensive on that section of the road, and that the cutting and filling did far exceed that which the original graduated note *called for*, to the best of my belief, to say at least seven feet in its highest place, thence running east and west in its regular grade to the surface; and that the lower strata of earth, slate, and stone, grew harder as the cutting grew lower, and that for about four or five feet of the lower part of the cutting, it consisted of strata of slate stone, about the thickness of one to three inches, which was impossible to remove in any way but to peck it up with a *mattock or pick-axe*; and that one contractor after another, succeeding each other by failures, until finally said Loomis and Gay were at last obliged to resume the work by the day to its completion; and that the expense, in addition to the nine feet, called for in the original note, or former location of the road, was, to the best of my belief, from nine to ten hundred dollars. I do furthermore respectfully say, that I have no pecuniary interest directly, indirectly or in any way relating to the issue or result of the petition; and furthermore the deponent sayeth not.

ABIAL B. SHERMAN.

STATE OF CONNECTICUT, }
New London county, } ss.

Personally appeared Abial B. Sherman, Esq., and made oath to the truth of the foregoing deposition by him subscribed.

Before me,

LEWIS HYDE,

Justice of the Peace.

NORWICH, December 2, 1836.

WASHINGTON, *December 21, 1836.*

I certify that I am acquainted with Lewis Hyde, Esq., of Norwich, Conn.; that he is a man of truth, and entitled to credit as such; and that he is, and for more than one year last past hath been, a justice of the peace in and for the county of New London, in said State; and that the within signature of his name is in his own proper handwriting.

SAMUEL INGHAM, *M. C.*

STATE OF CONNECTICUT, }
New London county, } ss.

I, John Dewitt, clerk of the county court in and for said New London county, do hereby certify that I am acquainted with Abial B. Sherman, Esq., of the town of Norwich, in said county; that he is a man of truth, and entitled to credit as such, and that he is a justice of the peace in and for said New London county; that his commission was dated on the 4th day of June, 1836, and will expire on the 20th day of June, 1837; and that full faith and credit are due to his official acts as such.

In testimony whereof, I have hereunto set my hand, and affixed the [L. s.] seal of said county this 28th day of December, 1836.

JOHN DEWITT, *Clerk.*

To the honorable Levi Woodbury, Secretary of the Treasury of the United States.

Know ye that I, Joshua Clark, of the town of Lebanon, in New London county, and State of Connecticut, of lawful age, do testify and say that I was employed in building half a mile of the western division of the Cumberland road, next adjoining the contract of Messrs. Walter Loomis and Abel Gay; that the said piece of road was built in the manner of the new mode of building, or setting up the stone edgewise, instead of throwing down in a horizontal position, consisting of the lower stratum of stone of one foot thick; and that, in his opinion, the difference between the new and the old mode of building was at least, in his belief, two dollars and fifty cents per rod. And, furthermore, this deponent saith that the said Loomis and Gay were at great expense in graduating the road on Buffalo hill, so called, near Mills's barn, and that below from three to nine feet cutting through the hill, the stone was of a slate kind, about the thickness of one to three inches, not hard enough to blow, and could not be removed in any way but pecked up with mattocks; and that said cutting was at least nine feet below the nine feet expressed in the graduating notes of the original contract, in the centre of the grade, in all about eighteen feet cutting in its highest place, and thence decreasing eastward to the bottom of the grade, thence westward from the highest place of cutting until the grade runs out, meeting the east end of my contract, and at least having to take up about three rods of my road after it was finished and accepted, and rebuilt at their expense.

And, furthermore, this deponent saith that he was knowing that said Loomis and Gay did furnish on or about one hundred and eighty feet of heavy coping stone, for the parapet walls of the culvert, and side walls supporting the filling at the foot of the hill.

And, furthermore, the deponent saith that he has received of the said Loomis and Gay the full amount for building, including the additional sum of two dollars and fifty cents per rod for setting up the stone after the new mode of building. And further this deponent saith not.

JOSHUA CLARK.

NEW LONDON COUNTY, ss.

Personally appeared Mr. Joshua Clark, and swore to and subscribed the same before me.

ABIAL B. SHERMAN,
Justice of the Peace.

NORWICH, November 11, 1836.

To the honorable Levi Woodbury, Secretary of the Treasury of the United States.

Know ye that I, Benjamin Carpenter, of the town of Bolton, in Tolland county, and State of Connecticut, of lawful age, do testify and say that I was employed on different sections of the Cumberland road; I worked on the section taken by Loomis and Gay with others; that after the new contract and mode of building or setting the stone up on edge, instead of tipping or throwing them in horizontally, in the lower stratum of stone of one foot thick, as Loomis and Gay, sub-contractors, finished theirs; the difference between the new and the old mode of building was at least two dollars and fifty cents per rod. And, furthermore, the deponent saith that the said Loomis and Gay were at great expense in graduating the road on Buffalo hill, so called, near Mills's barn, and that below from three to nine feet cutting through the hill, the stone was of a slate kind, of the thickness from one to three inches, not hard enough to blow, and could not be removed in any way but by being pecked up with picks and mattocks; and that said cutting was at least nine feet below the nine feet expressed in the graduating notes of the original contract, in the centre of the grade, in all about eighteen feet cutting in the highest place, and thence descending eastward to the bottom of the grade, thence westward from the highest place of cutting until the grade run out, meeting the contract of Joshua Clark, which they had to take up and build over after it was built and accepted, the distance of about three rods, for which they received no pay. And, furthermore, the deponent saith that the extra expense, in his opinion, must have been from nine hundred to one thousand dollars. And, further, this deponent saith that he was knowing that said Loomis and Gay did furnish on or about one hundred and eighty feet of heavy coping, for the parapet walls of the culvert, and side walls supporting the filling at the foot of the hill. And further the deponent saith not.

BENJAMIN CARPENTER.

TOLLAND COUNTY, ss.

Personally appeared Benjamin Carpenter, signer of the within and above deposition, and made oath to the same.

Before me,

CHESTER DAGGETT,
Justice of Peace.

BOLTON, November 25, 1836.

WASHINGTON, *December 27, 1836.*

I hereby certify that I am personally acquainted with Colonel Chester Daggett, of Bolton, Connecticut, and that he, in my opinion, is a man of truth and entitled to full credit as such; and that the said Daggett, before whom this deposition purports to have been taken, was at that time a justice of the peace for the county of Tolland, in said State, and I believe the within signature to be in the proper handwriting of the said Daggett.

ORRIN HOLT,

Member of House of Reps. in Congress.

I do hereby certify, that I, Benjamin Carpenter, of the town of Bolton, and county of Tolland, and State of Connecticut, of lawful age, do testify and say, that I was on the Cumberland road, and that I with others worked on the road which Loomis and Gay built, after they left, under the agency of Daniel Loomis, and that he was their agent for two years or more in keeping said road in repair, which was attended with great expense.

BENJAMIN CARPENTER.

TOLLAND COUNTY, ss.

Personally appeared Benjamin Carpenter, and made oath to the truth of the above deposition subscribed by him before me.

CHESTER DAGGETT,

Justice of the Peace

BOLTON, *December 29, 1836.*

I hereby certify that I am acquainted with Benjamin Carpenter, that he is a man of truth, and entitled to credit as such.

CHESTER DAGGETT.

WASHINGTON, *January 2, 1837.*

This certifies to all whom it may concern, that Chester Daggett, before whom the within deposition was taken, is a justice of the peace for Tolland county, in the State of Connecticut, and he is to me individually known, and is a man entitled to full credit as to truth and veracity.

ORRIN HOLT, *Mem. Ho. Reps. in Congress.*

To the honorable Levi Woodbury, Secretary of the Treasury of the United States :

Know ye that I, Henry Card, of South Kingston, county of Washington, and State of Rhode Island, of lawful age, do testify and say : That I was on the United States Cumberland road, and worked on different sections of it from the spring of the year of 1817, to the year 1820 ; that I was knowing to the contract of Loomis & Gay, and Messrs. Loomis, Skinner, & Loomis, who were sub-contractors under Baird, Campbell, and McGiffin, for the United States, for building about seven hundred and fifty rods of the said United States Cumberland road : and the deponent further saith, that, after the said contract was made, Josias Thompson, superintendent

on said road, on the part of the United States, contracted with Loomis and Gay to make certain alterations in said road not in the contract of Loomis and Gay, with Loomis, Skinner, and Loomis, viz: the lower stratum of twelve inches thick, was paved by setting the stone up on the edge instead of throwing, or laying them in promiscuously, in a horizontal position, as was the original contract. The extra expense of the latter contract with J. Thompson, superintendent, was, in my estimation, at least two dollars and fifty cents per rod, and that the latter contract was made conformable with the wishes of Mr. Monroe, after having viewed a part of said road. Furthermore, the deponent saith, that, on Buffalo hill, so called, the graduated notes said but nine feet cutting, but as it was found it would not answer according to the order of the superintendent, the said Loomis and Gay cut from nineteen to twenty feet at a great expense, which extra expense was contracted to be paid. Furthermore, the deponent saith, that he was knowing to a contract of Loomis and Gay on one part, and Josias Thompson, superintendent on said road, on the part of the United States, for putting on large heavy coping stone on the side walls of said road, at the extra expense of two dollars the superficial foot, and the said Loomis and Gay did so build about 180 feet, according to my recollection and belief; and further the deponent saith not.

HENRY CARD.

STATE OF RHODE ISLAND, ss.

Sworn to and subscribed, this day, before me.

WM. ENNIS,
Justice of the Peace.

NEWPORT, *October 8, 1838.*

DECEMBER 22, 1836.

I am acquainted with Henry Card, the within deponent, and know him to be a reputable and highly respectable man. I believe the within signature is in his own proper handwriting. Wm. Ennis, before whom the within deposition was sworn to, is a justice of the peace for the town of Newport, in the State of Rhode Island.

DUTEE J. PEARCE.

The testimony of Isaac Keney, of Coventry, in Tolland county, in the State of Connecticut, is as follows:

That sometime in the month of September or October, of 1817, I was at work between Washington and Claysville, in Pennsylvania, on the Cumberland and United States road, then building under the direction and superintendence of Josias Thompson, then authorized on the part of the United States to complete said road, and make such alterations as he thought proper. I was knowing to a contract made between the said Thompson and Walter Loomis and Abel Gay, sub-contractors under Loomis, Skinner and Loomis, in which contract I was nominally concerned. After said contract was made I sold out to the said Walter Loomis and Abel Gay, and have no interest in the petition about to be presented to Congress by the

said Loomis & Gay, praying for compensation for extra labor done on said Cumberland road.

The deponent further says that he was knowing to the contract made between the above named Thompson and Loomis & Gay; that said Thompson ordered said Loomis & Gay to pave said road, instead of placing the stone as specified in the original contract from Government, and that they, the said Loomis & Gay, should receive pay for the extra work.

ISAAC KENEY.

STATE OF CONNECTICUT, } ss.
Tolland county, }

Be it known that, on the 22d day of January, A. D. 1834, before the subscriber, a justice of the peace in and for said county, personally appeared Isaac Keney, and made oath to the truth of the above deposition, in due form of law; in testimony whereof I have hereunto set my hand the day and year last above mentioned.

ZELOTES LONG, *Justice of the Peace.*

Notes of Loomis & Gay's road contracts.

BEARINGS.	Ascent.	Descent.	Chains.	Links.	Remarks.
N. 75° E.	2½	-	13	25	At 10, ground 4½ feet too high; to dogwood stake, ground 2 feet too high.
Do.	2½	-	6	-	To a white oak stake out of ground.
Do.	-	3	3	20	To hickory stake, ground 4½ feet too high.
Do.	-	4½	3	40	To a dogwood stake; ground continues 4½ feet too high.
Do.	-	4½	8	30	Sassafras stake out of ground.
Do.	1¼	-	6	25	Dogwood stake north edge of old road.
N. 79½° E.	-	4½	4	-	At 2, ground 3 feet too high; to hickory stake out of ground.
Do.	-	4½	7	40	Black oak stake, concave hill side.
Do.	1½	-	8	-	Dogwood stake and white oak tree.
Do.	4	-	6	-	To a hickory stake and stump.
Do.	4	-	4	-	Dogwood stake and stump.
Do.	Lev	cl.	6	25	To a white oak tree in the path.
Do.	-	3	5	40	At 3, ground 2 feet too high to dogwood stake.
N. 49° E.	-	5	18	30	To a white oak tree in the old road.
Do.	-	5	11	-	At ground 5 feet too low; dogwood stake.
N. 36° E.	-	4½	4	30	Iron wood stake, ground 4½ feet too high.
N. 50½° E.	-	4½	6	-	Hickory stake, ground continues 4½ feet too high.
N. 60½° E.	-	4½	7	10	To dogwood stake out of ground.
N. 75½° E.	-	4½	6	15	At 1, ground 3 feet too high; iron-wood stake out of ground.
N. 87½° E.	-	4½	4	35	To a white oak tree; ground 4½ feet too high.
N. 84½° E.	-	4½	7	40	Small drain; white oak stake out of ground.
N. 84° E.	-	4½	11	15	At 4, ground 4 feet too high; at 9, crosses a deep hollow spring branch; ground 20 feet too low; bridge 5 feet arch; dogwood stake.
N. 77° E.	-	4½	13	20	At 4, ground 4½ feet too high; to iron-wood stake and wild cherry tree at Brownlee's fence, out of ground.
N. 52½° E.	-	4½	7	30	At 2, ground 8 feet too low; bridge 12 feet cord; to stake in meadow ground 2 feet too low; here the run to be turned to the foot of the hill, south side.
Do.	-	1¼	5	20	To stake in hill, south side.
Do.	-	1¼	8	25	To cherry stake in hill, south side.
Do.	3	-	14	-	At 9, crosses Brownlee's fork of Buffalo bridge 2 arches, one 30 and the other 25 feet cord, to stake and white oak stake on bank.
N. 51¼° E.	5	-	2	25	To a thorn stake and white oak, ground 4½ feet too high.
Do.	5	-	9	10	To a dogwood stake out of ground.
N. 53° E.	1½	-	11	40	To an iron-wood stake, ground 1 foot too high.
Do.	1½	-	10	10	To a hickory stake out of ground.
N. 40° E.	3½	-	7	40	Crosses deep hollow, ground 20 feet too low; bridge 6 feet cord to stake; ground 4½ feet too high.
Do.	3½	-	9	30	To a stake in field, blown up root out of ground.
N. 49½° E.	2	-	19	35	At 14, crosses a hollow, bridge 5 feet cord, hickory stake.
N. 33½° E.	4½	-	11	20	At 3, crosses deep hollow, 4 feet arch; concave ground to dogwood stake, and high dead stump in field.
Do.	4½	-	4	-	To a stake at fence, ground 3 feet too high.
N. 38½° E.	4½	-	5	25	To a dry stake out of ground.
N. 35¼° E.	4½	-	4	30	To a stake at fence.
N. 66° E.	3	-	16	20	To a hickory stake top of the hill.
N. 64½° E.	-	5	1	25	To a stake and stump, ground 4½ feet too high.
N. 56½° E.	-	5	1	40	To a dry stake, ground 6 feet too high.
N. 47½° E.	-	5	2	40	To near the southeast corner of Mills's barn; ground 9 feet too high.
N. 60½° E.	-	5	9	25	At 7, crosses a deep hollow; arch 4 feet cord; ground about 15 ft. too low; to oak stake and stump, ground 3 ft. too low.
S. 68° E.	-	5	8	10	To a dogwood stake and hickory tree.
S. 86¼° E.	-	5	6	10	Dogwood stake and black walnut tree.
N. 80¼° E.	-	5	8	5	At 6, crosses a gulf, ground 30 ft. too low; bridge 8 feet cord.
S. 73½° E.	-	1	8	-	To an iron-wood stake and blown up root.
Do.	-	4	9	25	At 7, crosses a spring branch, ground 8 feet too low; bridge 6 feet arch to stake top of the hill; ground 2 feet too high.

DOCUMENTS

In relation to the bill "in addition to the act for the relief of Walter Loomis and Able Gay," approved July 2, 1836.

JANUARY 17, 1837.

Submitted by Mr. HUBBARD, from the Committee of Claims, and ordered to be printed.

TREASURY DEPARTMENT,
First Auditor's Office, December 30, 1836.

SIR: In the case of Loomis and Gay, under the act of Congress passed at their last session, entitled "An act for the relief of Walter Loomis and Abel Gay," authorizing the Secretary of the Treasury to settle, upon principles of equity, the accounts of the said Loomis and Gay, so far as they are the original contractors for making the Cumberland road, and to pay any balance that may be found due, provided that said balance shall not exceed forty-one dollars and seventy-one cents, and which you referred to this office for a report, I submit the following statement:

The said claimants present a statement of their claim in a paper herewith transmitted, marked A. This will give you some idea of the nature of their claim. It appears by a report made in this office, No. 40,281, and from other papers now presented, that they were contractors on the said road during the time it was under the superintendence of Josias Thompson; that before the final adjustment of their accounts, said Thompson was removed from office and commissioners were appointed to take charge and direct the management of said road. Thompson had paid them, it would seem, the sum of \$4,125 on account of their contract, and by his measurement and estimate of the work, they were entitled to receive in all \$4,166 71. This appears by a report from Mr. Secretary Crawford, made to Congress through the President of the United States, dated 14th March, 1820, and will be found among Executive documents of the 1st session 16th Congress, vol. 7. They were then entitled, according to Thompson's estimate, to a balance of \$41 71; and this is the balance to which, in my judgment, the *proviso* in the act of Congress has reference. It seems, however, that, after Thompson was removed from office, the commissioners appointed to take charge of the road caused another estimate of their work to be made, and reduced the amount very materially.

By the report made from this office, before referred to, they were charged with the amount they had received from Thompson, to wit: \$4,125 00
And credited with the amount of their contract, per estimate of the commissioners, to wit: - - - - 2,845 86

Leaving a balance against them of - - - - 1,279 14

And by a note appended to the statement on which that report was founded, an abstract of which, marked B, is herewith transmitted, it is stated that the difference between Thompson's measurement and that of the commissioners, amounts to 1,285 23

And that if Thompson's measurement should be allowed, there
 would be a balance due to the claimants of - - - \$6 14

By Mr. Crawford's report made to Congress, Thompson's estimate would have given them a balance of \$41 71. How to account for the difference between that report and the note I have just referred to, I know not, nor have I any means to test which estimate, that of Thompson or the commissioners, is most accurate. I understand, however, that in most of the claims of a similar character which have been adjusted under special acts of Congress, Thompson's estimate has been generally allowed. The said Loomis and Gay also claim for extra work done on the said contract under the direction, as they allege, of the superintendent, for putting on heavy coping stones, the further sum of \$357 50; also \$900 for extra cutting on said contract. They further represent, in their petition to Congress, that they were sub-contractors in a contract originally taken by Beard, Campbell, & McGiffin, upon which contract they allege they performed extra work under the special authority of the then President of the United States; and they contend they were original contractors as to this extra work, although they were sub-contractors as to the original contract itself. For this extra service they claim, by their petition and account, the sum of \$1,872 50. They also claim an extra allowance for keeping 749 rods of the said road in repair, from the 8th November, 1819, the time of completing their contract, to the 8th November, 1821, when it was taken off their hands, at one dollar per perch. They also claim \$1,000 for time lost and expenses in prosecuting their claim. On all these several sums they claim interest from the completion of the work up to the present time.

Whether the evidence presented is sufficient to establish the facts alleged, I have not deemed it my duty to express an opinion, as, by my construction of the law, the jurisdiction of the Secretary is expressly limited to the balance of \$41 71, appearing to be due by Thompson's statement on their original contract.

If Congress intend that the Secretary of the Treasury, or the proper accounting officers, should adjudicate the several claims presented in the petition and statement of the said Loomis and Gay, that intention should be clearly expressed. So far from that being the case in the present act, I think they are excluded. I deem it proper to state, however, that an act of Congress was passed on the 5th May, 1824, for the relief of Ichabod Lord Skinner, a sub-contractor on the said road, (see volume 7, page 245,) authorizing the Secretary of the Treasury to settle the said Skinner's claim on principles of equity, subject to the approbation of the President. In the settlement of that claim, allowances were made precisely similar to the claims now preferred by Loomis and Gay, as will appear by a copy of the proceedings in the case, herewith transmitted. It also appears that special acts have been passed for the relief of other contractors on said road, and that their claims have been adjusted on very liberal principles. If Congress intend that similar allowances shall be made to Loomis and Gay, provided the evidence shall sustain the facts which they allege, it would seem to me to be proper that that intention should be clearly expressed; without it, I would not deem myself, as an accounting officer, authorized at this late period to allow them. As the subject must come before Congress at any rate, before any greater sum than \$41 71 can be paid, they will have it in their power to review the

merits of the case. As it now stands, I do not consider I have any jurisdiction whatever over it, but have submitted the above remarks at your request, to aid you in any decision you may deem it your duty to make.

I am, very respectfully, your obedient servant,

J. MILLER, 1st Auditor.

Hon. LEVI WOODBURY,
Secretary of the Treasury.

True copy of original on file in this department.

Attest :

McCLINTOCK YOUNG, Chief Clerk.

TREASURY DEPARTMENT,
January 4, 1837.

A.

Dr. *United States in account with Walter Loomis and Abel Gay.*

1819, November 8.

No. 1. To balance due them for building side walls on the western section of the Cumberland road, on contract, at Buffalo hill, near Mills's barn, so called	\$41 71
No. 2. To interest on said \$41 71, to 8th November, 1836, being 17 years, at 6 per centum	42 53
No. 3. To furnishing, erecting, and putting up $178\frac{9}{12}$ feet of heavy coping stones, hewn out and doweled together, 18 inches wide by 21 inches high, laid on by order of the superintendent for the coping of the parapet walls, at \$2 per foot	357 50
No. 4. To interest on \$357 50 to November 8, 1836	364 65
No. 5. To extra labor in graduating the road on Buffalo hill, so called, near Mills's barn, from cipher to 6 feet cutting below the 9 feet expressed in the original graduating notes, upon which the contract was predicated	900 00
No. 6. To interest, up to November 8, 1836, at 6 per cent. on \$900	918 00
No. 7. To alterations made in the manner of building the road, of setting up edgewise the lower stratum of stone of one foot thick, instead of being laid down horizontally, as agreed by the superintendent, and paid for in preceding cases, at \$2 50 per rod on 749 rods	1,872 50
No. 8. To interest on \$1,872 50 to November 8, 1836	1,909 95
No. 9. To keeping 749 rods of road in repair from November 8, 1819, to November 8, 1821, at \$1 per rod	749 00
No. 10. To 15 years' interest on \$749	674 10
No. 11. To one and a half year lost time and expenses in preparing our claims and presenting them to Government for adjustment	1,000 00
No. 12. To travelling expenses, and expense at Washington, while attempting to obtain a settlement in 1836	

B.

On the 7th March, 1820, the account of Josias Thompson, as superintendent of part of Cumberland road, was reported, per No. 40,281, which represented the accounts of the contractors as closed. In the case of the act of Walter Loomis and Abel Gay, he had charged them on his ledger with payments amounting to \$4,125, and given them credit for a similar amount.

In the year 1822, by direction of Mr. Secretary Crawford, the accounts of each contractor were readjusted and reported on by the Auditor, charging the contractors with the amount advanced or paid to them by Mr. Thompson, and crediting them with the work performed or executed by them, according to the measurement of Mr. Abner Lacock and ——— Wilson, commissioners appointed, I believe, by the Secretary of the Treasury, for that purpose.

The advances charged to them were	-	-	-	\$4,125 00
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And they were credited with 1,034 perches 21 feet 3 inches mason work, being the amount of their work as per measurement of said commissioners, at \$2 75 per perch	-	-	-	2,845 86
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Leaving a balance due from him to the United States of	-	-	-	<u>1,279 14</u>
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Whereas by the book of measurements by said Thompson, they would have been entitled to credit for 1,502 perches 5 feet 9 inches mason work, at \$2 75	-	-	-	\$4,131 14
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From which deducting the amount advanced to him by Mr. Thompson	-	-	-	-	4,125 00
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Would have left a balance <i>due to him</i> of	-	-	-	<u>6 14</u>
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By the statement of the Treasury Department, dated March 6, 1820, on the estimate of Mr. Thompson, dated December 10, 1818, it appears that Mr. Thompson <i>estimated the work</i> as amounting to	-	-	-	\$4,166 71
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From which deducting the amount paid to him by Thompson	-	-	-	-	4,125 00
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Would leave due to him, as per said estimate	-	-	-	<u>41 71</u>
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WM. PARKER.

FIRST AUDITOR'S OFFICE,
December 19, 1836.

[Statement accompanying the message from the President of the United States of the 17th of March, 1820, transmitting statements of expenditures in constructing the Cumberland road.]

Statement of the amount of contracts (per Mr. Thompson's estimate of December 10, 1818) for making the western division of the Cumberland road; the amount of payments up to, and the balance due contractors on that day per said estimate; the amount of bills (bearing date up to said 10th of December, 1818) paid at the Treasury, and the balance due on that day; and, also, showing the balance due each contractor on this 6th of March, 1820.

CONTRACTORS.	Amount of contracts.	Payments made according to Mr. Thompson's estimate.	Balances due contractors per Mr. Thompson's estimate.	Amount of payments at the Treasury, as per bills drawn up to Dec. 10, 1818.	Balances due contractors on said Dec. 1818.	Amount of payments at the Treasury upon bills up to this day.	Balances due to contractors.
Bard Gormley	\$11,555 99	\$11,555 99	-	\$11,555 99	-	\$11,555 99	-
P. Gormley	12,886 72	12,886 72	-	12,886 72	-	12,886 72	-
T. Bleakly	29,913 88	29,913 88	-	29,913 88	-	29,913 88	-
J. Foster	7,451 46	7,451 46	-	7,476 46	Overpaid 25	7,476 46	Overpaid 25
T. McGiffin	161,842 18	125,900 00	\$35,942 18	125,900 00	\$35,942 18	159,400 00	\$2,442 18
M. Shepherd (with Pauls)	329,585 00	145,675 00	183,910 75	148,675 00	180,910 00	288,975 00	*40,610 00
T. Caffield	520 00	520 00	-	520 00	-	520 00	-
D. Steimrod	23,727 26	23,727 26	-	23,727 26	-	23,727 26	-
J. McLure	38,285 75	27,000 00	11,285 75	27,000 00	11,285 75	36,861 53	1,424 22
W. Chapline, jr.	4,703 70	4,703 70	-	4,703 70	-	4,703 70	-
J. L. Skinner	4,252 50	1,000 00	3,252 50	1,000 00	3,252 50	4,000 00	252 50
G. Dawson	14,787 00	12,500 00	2,287 00	12,500 00	2,287 00	13,700 00	1,087 00
J. Kreps	13,256 87	13,256 87	-	13,256 87	-	13,256 87	-
Loomis, Skinner, and Loomis	86,906 00	70,700 00	16,206 00	70,700 00	16,206 00	85,350 00	1,556 00
J. M. Oliver	25,127 00	18,709 50	6,417 50	18,709 50	6,417 50	24,923 50	204 00
J. Doyle	23,766 25	19,403 72	4,362 53	19,403 72	4,362 53	23,236 72	531 33
Z. Patch	200 00	200 00	-	200 00	-	200 00	-
J. Hunter	2,493 75	1,500 00	993 75	1,500 00	993 75	2,400 00	93 73
Loomis and Gay	4,166 71	3,250 00	916 71	3,250 00	916 71	4,125 00	41 71
M. Curren	295 00	295 00	-	295 00	-	295 00	-
W. Stephenson	2,867 50	2,217 50	650 00	2,217 50	650 00	2,587 50	280 00
J. Bell	2,683 50	2,600 00	83 50	2,600 00	83 50	2,616 92	66 58
	801,279 02	534,966 20	266,308 17	537,991 60	263,308 17	752,710 55	48,589 47
							* 4,000 00
Real balance	-	-	-	-	-	-	44,589 47

TREASURY DEPARTMENT,
First Auditor's Office, December 26, 1838

SIR: It appears from a memorandum presented to me in your hand writing, by Mr. Gay, that you wish to be informed why it is that the Treasury Department cannot settle and pay the claim of Loomis & Gay, as contractors on the Cumberland road, if it is deemed a just claim; to which I answer: That I am not aware of any law that gives any officer of the department any such authority; and it is very certain that if the claim was admitted by the accounting officers, there is no appropriation applicable to its payment, unless it be that for "unprovided claims," which would very soon be exhausted if claims of this character were paid out of it. I would also mention a fact that I think ought to be considered as conclusive on this point, and that is, so far as I am informed, no such claim has ever been settled and paid at the Treasury, except under special acts of Congress, many of which have been passed for the relief of various individuals.

I am, very respectfully,
A. MAHON,
Acting Auditor.

Hon. HENRY HUBBARD,
Senator U. S.

2

Statement of mason-work done under the contract of Walter Loomis and Abel Gay on the Cumberland road.

No.	Work where done.	Pages in the commissioner's book of measures Z.	Pages in the late superintendent's book of measures.	Measurement by the late superintendent, Josias Thompson.						Measurement by the commissioners, per their book Z.			
				As per commissioner's statement T.			As per superintendent's book of measures.						
				Perches.	Feet.	Inches.	Perches.	Feet.	Inches.	Perches.	Feet.	Inches.	
1	Side wall to culvert in Mitchell's woods	96	309	138	2	-	138	2	-	138			In the late superintendent's book it appears that the measurement of No. 2 only is completed.
2	Double culvert in Caldwell's field - -	68 & 96	310	132	7	-	133	6	6	132	7		
3	Side wall to culvert near Mills's barn -	68, 69, & 96	311	1,230	22	-	1,230	22	-	764	12	3	
				1,501	6	3	1,502 1,034	5 21	9 3	1,034	21	3	
				Difference -			467	9	3				

DR.

Walter Loomis and Abel Gay, in account with the United States.

CR.

To amount received by them from Josias Thompson, late superintendent of said road, and for which said Thompson has received credit, per report No. 40,281, dated 17th March, 1820 -	\$4,125 00	By amount of their compensation for 1,034 perches 21 feet 3 inches mason work, done on the Cumberland road, under their contract of 25th August, 1817, agreeably to the measurement of the commissioners, as above stated, at \$2 75 per perch - - - - -	\$2,845 86
		By balance due to the United States - - - - -	1,279 14
	<u>4,125 00</u>		<u>4,125 00</u>

NOTE.—The late superintendent states the account of Loomis and Gay, as closed on folio 40 of his ledger, the balance as above stated is, therefore, a difference, being the amount he has over-credited them for work done, \$2 75 per perch, on 467 perches 9 feet 3 inches, the difference between the measurement of the commissioners and the late superintendent, would amount to - - - - - \$1,285 28

Deduct short credited by the superintendent, on his own measurement - - - - - 6 14

Balance as above stated - - - - - 1,279 14

1,502 perches 5 feet 9 inches, at \$2 75 - - - - - \$4,131 14
 Credited - - - - - 4,125 00

Short credited - - - - - 6 14

AUDITOR'S OFFICE, November 22, 1822.

WM. PARKER.

